

## OVERVIEW OF THE IDAHO WATER SUPPLY BANK

The Idaho Water Resource Board (Board) has the authority to operate the Idaho Water Supply Bank (Bank). The purpose of the Bank is to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water uses; and provide a source of funding for improving water user facilities and efficiencies (Section 42-1761, *Idaho Code*). The Bank is essentially a water exchange market operated by the Board to assist in marketing the water rights of natural flow and water stored in Idaho reservoirs. It is a mechanism by which water rights that are not being used can be made available for use by others through the lease and rental process.

The Bank includes two distinctly different categories of exchange markets (figure A). The first manages water stored in reservoirs called **Rental Pools**. The second is called the **Board's Water Supply Bank** (Board's Bank), which manages the exchange of natural flow water rights (surface and ground water) and privately held storage water rights.

### **Board's Bank**

While local committees oversee operation of the Rental Pools, the Director of the Idaho Department of Water Resources (Director, Department) administers the Board's Bank on behalf of the Board (Water Supply Bank Rules, IDAPA 37.02.03, Board Resolutions May 16, 1997, December 11, 1998).

Applications to lease and rent water (see Definitions) from the Board's Bank are currently received and processed by the Department. Unless a resolution is specifically required by the Board, these applications are approved by the Director or other authorized Department staff.

The owner or other authorized agent may offer to **lease** all or a portion of a water right to the Board's Bank by filing an Application to Lease a Water Right to the Board's Water Supply Bank. Water authorized for diversion under a leased right is then made available for rent by another water user. A party may request to **rent** water from the Board's Bank for a fee by filing an Application to Rent Water from the Board's Water Supply Bank. The Department identifies whether one of the rights in the Board's Bank meets the needs of the renter and whether rental of the specific right for the proposed use is consistent with the rules of the Board's Bank. The water right owner, or lessor, receives a payment only if a rental is executed on the water right in a given year.

In accordance with Section 42-1764, *Idaho Code*, rental of water from the Board's Bank may be a substitute for the transfer proceeding requirements of Section 42-222, *Idaho Code*. Therefore, rental of water under a water right in the Board's Bank can authorize a change in point of diversion, place of use, or nature of use. However, this is typically authorized for only a short-term period. For rentals of more than five (5) years, the Department is required to publish notice and obtain Board review. Additionally, the Department will not rent water on a temporary basis for a use that requires a permanent water right unless the renter can demonstrate a reasonable effort is being made to provide for the long-term water use.

Additional information to address frequently asked questions (FAQs) about the lease and rental processes is provided in the General Information section.

### **Rental Pools**

There are currently six rental pools in Idaho, five of which are operated by local committees appointed by the Board. They include the following:

- Water District 01 Rental Pool – upper Snake River (upstream of Milner Dam near Burley)
- Water District 63 Rental Pool – Boise River
- Water District 65 Rental Pool – Payette River
- Water District 65K Rental Pool – Payette River on Lake Fork Creek
- Shoshone-Bannock Rental Pool – upper Snake River (operated independently by the tribe)
- Water District 74 Rental Pool – Lemhi River (Created by special legislation to authorize the exchange of natural flow water rights to satisfy the Board's minimum stream flow water right on the Lemhi River)

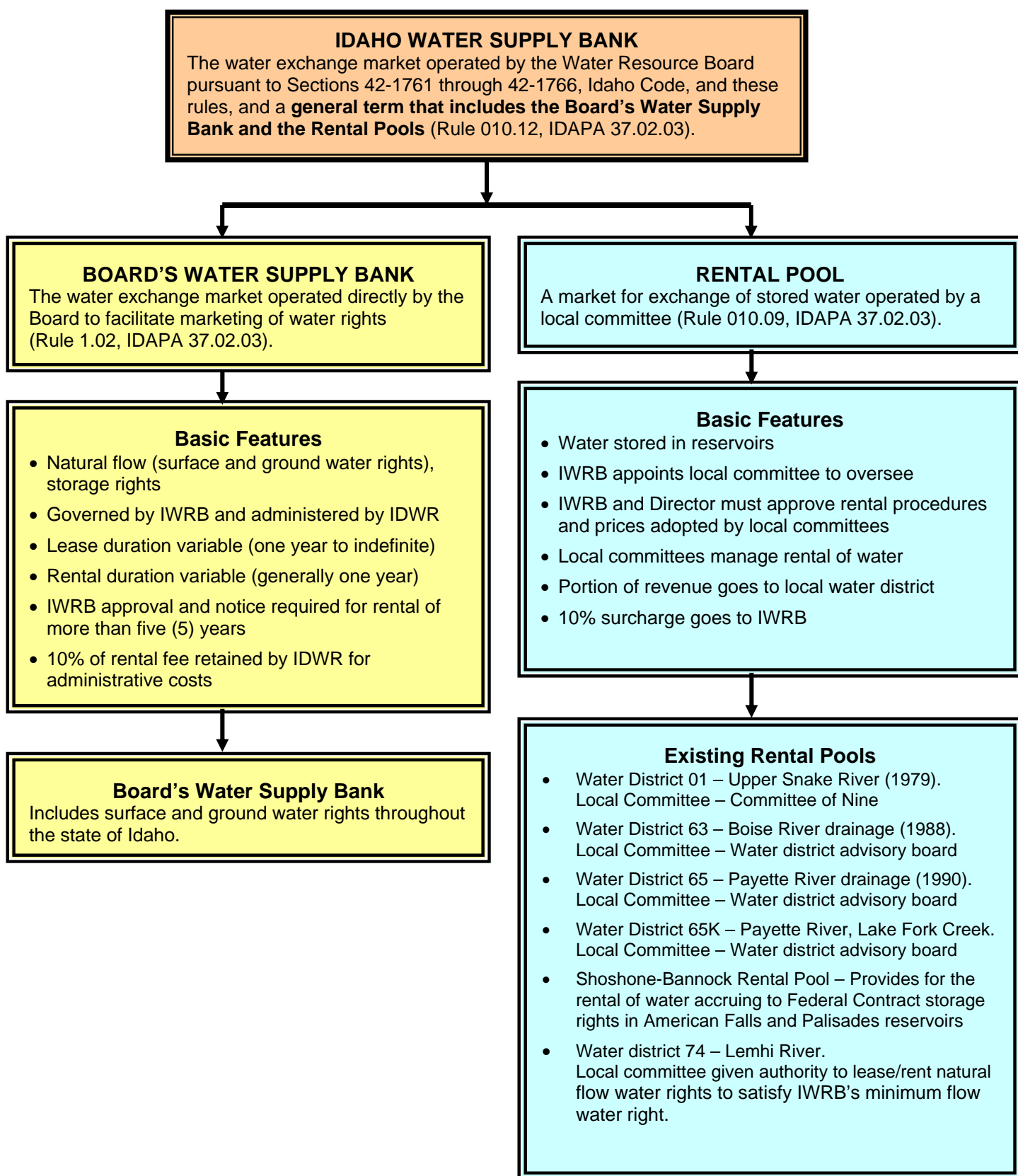


Figure A. Water Supply Bank Flow Chart

## **History of the Idaho Water Supply Bank**

Water users in eastern Idaho employed a rental pool for years before the current statutory mechanism was enacted that created the Idaho Water Supply Bank (Bank). The rental pool allowed entities with surplus storage water to make it available to water users who did not have enough water in a particular water year.

Many canal companies hold natural flow rights with senior priority dates adequate for providing a full supply of water. In years when a company has excess water, it must weigh the benefit of renting the storage to another user against the risk that the storage space may not refill during the following season. If the risk is seen to be reasonable, the surplus water is made available to other users.

The first known annual rental pool transfers occurred during the drought period of the 1930s when 14,700 acre-feet of water was rented for 25 cents per acre-foot. By 1978 the annual rental price had increased to 75 cents per acre-foot with part of the fee going to the entity supplying water to the rental pool and part going to the water district to cover administrative costs.

In 1979 the Idaho Legislature formalized the program of annual leases of storage water entitlements. The legislation set into law a 1976 policy recommendation of the state water plan that called for the creation of a "water supply Bank...for the purpose of acquiring water rights or water entitlements from willing sellers for reallocation by sale or lease to other new or existing uses." The responsibility for the Bank was placed under the Idaho Water Resource Board (Board).

During this time the Board also appointed the Water District 01 advisory committee, also known as the Committee of Nine, as the local committee to administer the rental pool in the Upper Snake River Basin. The district covers the area of the state served by Snake River water from the Wyoming border to Miner diversion dam near Twin Falls. The river irrigates about 1.2 million acres from natural flows held by private canal companies, together with about 4.1 million acre-feet of storage space in federal private reservoirs.

In 1988 a second rental pool was started in the Boise River drainage basin (Water District 63). This system serves about 300,000 acres of irrigated farmland with natural flow and about one million acre-feet of storage in three federal reservoirs. In 1990 the third major rental pool was formed on the Payette River drainage (Water District 65).

Smaller rental pools include the Lake Fork Creek rental pool (Water District 65K) in the Payette River basin, the Shoshone-Bannock Tribes rental pool, which provides for the rental of water accruing to federal contract storage rights in American Falls and Palisades reservoirs, and the Lemhi rental pool (Water District 74) in the Lemhi River basin. The latter was formed in 2001 after special legislation approved a minimum instream flow water right in the name of the Board and the creation of a rental pool to provide for the lease and rental of natural flow water rights to satisfy this right. This is the only rental pool managing the exchange of natural flow water rights. It was specifically formed to prevent a call on water rights by the National Marine Fisheries Service (NMFS) under the Endangered Species Act in the lower 7.5-mile reach of the Lemhi River.

Though the majority of activity in the Bank takes place in the rental pools, activity and interest in the Board's Bank has increased significantly in the last five years. Awareness of the Board's Bank has come about, in part, due to recent drought conditions, restrictions on the processing of new water rights, mitigation requirements in moratorium areas, and increased monitoring of illegal diversions.

## GENERAL INFORMATION – BOARD’S WATER SUPPLY BANK FAQs

Following is general information about the Board's Bank provided to help answer questions frequently asked by members of the public.

### General FAQs

**What is the Board’s Bank:** The Board’s Bank is a program administered by the Department on behalf of the Board that allows water users who are not using their water rights to make water available to those in need of water on a temporary basis.

**Board’s Bank vs. Rental Pools:** The **Board’s Bank** manages the lease and rental of natural flow water rights (ground water and surface water) and privately held storage rights throughout the state of Idaho, while the **rental pools** manage the rental of stored water at specific storage locations (e.g. there are rental pools on the upper Snake, Boise, and Payette rivers).

**Available Information on the Board’s Bank:** Lease and rental applications can be provided electronically via email (pdf files) or mailed upon request. On-line lease and rental forms and general information about the Board's Bank and rental pools are accessible through the Department’s website at the following address:

[http://www.idwr.idaho.gov/water/rights/water\\_rights\\_forms.htm](http://www.idwr.idaho.gov/water/rights/water_rights_forms.htm)

### Leasing Information – FAQs

**Why Lease:** If all or a portion of a water right is not being used, it may be leased to the Board's Bank to allow another water user to rent the right for use on a temporary basis. The lessor will receive a payment only if the right is rented. Additionally, leasing a right to the Board's Bank is one method of protecting a right against forfeiture due to non-use. While a water right is in the Bank, forfeiture provisions for non-use, pursuant to section 42-222(2), *Idaho Code*, are stayed.

**How to Lease:** To lease a right to the Board's Bank, an Application to Lease a Water Right to the Board's Water Supply Bank must be completed and submitted to the Department. There is no fee to file an application to lease a water right to the Board's Bank.

**Forfeiture of Water Right:** Water rights credited or leased to the Board's Bank are not subject to forfeiture for nonuse pursuant to section 42-222(2), *Idaho Code*. However, placing the water right in the Board's Bank does not restart the five-year period of non-use. It will continue upon removal from the Bank if the period of non-use occurred prior to the date of acceptance into the Bank, and the water right was not beneficially used while leased to the Bank. For example, if a water right is not used for three years before it is placed in the Bank, then use of the water right should be resumed within two years after the right is released from the Bank or the right may be subject to forfeiture.

**Lessor:** The party offering a water right for lease is considered to be the “lessor”. If the applicant is not the current water right owner, a Notice of Change in Water Right Ownership must be filed and processed or written authorization from the water right owner to offer the right for lease must be provided.

**Lease Period/Term:** The length of time and portion of the year that the water right, or portion thereof, is leased to the Board's Bank. This period is identified on the Lease Acceptance. The lessor may specify how long they wish the right to remain in the Board's Bank and may generally withdraw a water right on relatively short notice, provided the water right has not been committed for use through a Rental Agreement.

**Leased Water Right Usage:** While a water right is leased to the Board's Bank, the owner of the water right may not use the water right, even if the water right is not currently rented.

**Lease Payment:** Payment to the lessor is contingent upon rental of the water right from the Board's Bank. The Department retains ten percent (10%) of the gross amount received from the

rental of a water right is for administrative fees. The remaining ninety percent (90%) is issued back to the lessor. Payments to the lessor are issued at the end of the current rental year to ensure compliance with the Lease Acceptance.

**Rental Rate:** The Board establishes a rate in dollars per acre-foot for the rental of water from the Board's Bank referred to as the current rental rate. Unless otherwise agreed upon by the lessor and the renter (pre-negotiated price) and approved by the Director, the price for rental of a water right leased to the Board's Bank will be the current rental rate. The current rental rate includes all administrative fees.

**Stacked Water Rights:** As defined in the Transfer Processing Policies and Procedures Memorandum (Transfer Processing No. 24, part 5d.3) water rights are "stacked" when two or more water rights, generally of different priorities and often from different sources, are used for the same use and overlie the same place of use. Water rights for irrigating a permissible place of use are not stacked when the water rights in total provide for irrigating up to the maximum acreage authorized within a permissible place of use.

Similar to the transfer process, applicants are generally required to offer the corresponding portion of each of the stacked rights for lease to the Board's Bank to avoid enlargement of the right through "unstacking" one or more of the water rights. Consequently, land irrigated with stacked water rights generally must be "dried up" for the duration of the lease period.

An exception is allowed if a supplemental irrigation right can be leased to the Board's Bank as described below.

**Supplemental Water Rights:** A supplemental irrigation water right can be leased to the Board's Bank. However, additional information may be required to determine the volume historically diverted under the water right and the water right may be limited to rental as a supplemental irrigation water right. Additionally, the Department is authorized to deny acceptance of a water right into the Board's Bank based on the viability of renting a right.

## **Rental Information – FAQs**

**Why Rent:** If a party needs water for a short-term use that requires a water right, water can be rented from the Board's Bank to authorize the use. Water users are generally encouraged to seek a permanent water right for a use that will be long-term or permanent.

**How to Rent:** An Application to Rent Water from the Board's Water Supply Bank must be completed and submitted to the Department for review and approval.

**Renter:** The party requesting to divert water under the authority of the water right(s) leased to the Board's Bank is considered to be the "renter".

**Rental Period:** The renter may specify how long they want to rent water from the Board's Bank. However, appropriate rights must be available for rent for the period requested. Additionally, rental of water through the Board's Bank provides only temporary authorization of water use. Therefore, rentals are usually short-term. For rentals of more than five (5) years, the Department is required to publish notice and obtain Board review. Additionally, the Department is selective about renting water on a temporary basis for a use that requires a permanent water right unless the renter can demonstrate a reasonable effort is being made to provide for long-term use of the water or that the use is intended to be temporary.

**Rental Fee:** A fee is charged to rent water from the Board's Bank. The fee is based on the volume of water rented in acre-feet and the rental rate set for the water right (dollars per acre-foot) at the time the right is leased to the Board's Bank. The majority of water rights are rented at the current rental rate. The rental fee includes all administrative fees and is generally collected on an annual basis.

**Rental Rate:** The Board establishes a rate in dollars per acre-foot for the rental of water from the Board's Bank referred to as the current rental rate. Unless otherwise agreed upon by the lessor

and the renter (pre-negotiated price) and approved by the Director, the price for rental of a water right leased to the Board's Bank will be the current rental rate. The current rental rate includes all administrative fees.

**Selecting a Water Right to Rent:** Once a rental application is filed, the Department reviews whether there is a right leased to the Board's Bank that will meet the needs of the renter. There must also be a reasonable hydraulic connection between the water source and point of diversion of the leased water right and the source where the rented water will be diverted. For example, a ground water right in the Big Wood River drainage cannot be rented as surface water or ground water in the Boise River drainage.

Water rights in the Board's Bank that have a common source of supply are generally rented from the Board's Bank in the order that the water rights were leased to the Bank. In other words, the first right leased to the Board's Bank has rental priority over water rights leased at a later time.

## DEFINITIONS OF COMMONLY USED TERMS

The following terms are commonly used in the administration of the Board's Bank. Those clarified by Idaho statutes, administrative rules, or other administrative actions are referenced accordingly.

**Application to Lease a Water Right to the Board's Water Supply Bank** – An application filed with the Department by the owner, or other authorized party, of a water right to offer all or a portion of a water right for lease to the Board's Bank.

**Application to Rent Water from the Board's Water Supply Bank** – An application filed with the Department to rent water from the Board's Bank. The quantity of water, place of use, point of diversion, purpose of use, and period of use are also specified on the application.

**Board's Water Supply Bank** – The water exchange market operated directly by the Board to facilitate marketing of water rights (WSB Rule 010.02). The Board's Bank includes ground and surface water rights and privately held storage rights throughout the state. The Department administers the Board's Bank on behalf of the Board.

**Companion Applications** – An application to lease a water right filed together with an application to rent water under the same water right. In some cases, both applications are filed by the same owner. These applications can be processed together if consistent with the rules governing the Board's Bank.

**Current Rental Rate** – The Board establishes a rate in dollars per acre-foot for the rental of natural flow water rights referred to as the current rental rate. Unless otherwise agreed upon by the lessor and the renter (pre-negotiated price) and approved by the Director, the price for rental of a water right leased to the Board's Bank will be the current rental rate. The current rental rate includes all administrative fees. As of March 17, 2006, the current rental rate is \$14.00 per acre-foot. Rates are subject to change upon resolution by the Board.

**Lease** – To convey by contract a water right to the Board's Bank or stored water to a rental pool operated by a local committee (WSB Rule 010.05). The five (5) year period of nonuse for forfeiture is stayed while a water right is leased to the Idaho Water Supply Bank (Section 42-1764, *Idaho Code*).

**Lease Acceptance** – An approval document issued by the Department, signed by the Director or other authorized staff, outlining the terms of the lease of a water right, or portion thereof, to the Board's Bank.

**Lease Begin Date** – The date a water right is accepted into the Board's Bank. This date is specified on the Lease Acceptance.

**Lease Payment** – If a leased water right is rented from the Board's Bank, a portion of the rental fee is paid to the lessor. The Department retains ten percent (10%) of the gross amount received

from the rental of a water right in the Board's Bank is for administrative fees. The remaining ninety percent (90%) is issued back to the lessor at the end of the current rental year.

**Lease Period/Term** – The length of time and period the right, or portion thereof, is leased to the Board's Bank.

**Lessor** – The individual or entity that files the application to lease all or a portion of a water right to the Board's Bank. The lessor may be the owner of the water right or other authorized party. If the lessor is not the water right owner, the lessor must show proof of authorization to lease the water right to the Board's Bank.

**Rent** – To convey by contract a water right from the Board's Bank or stored water from a rental pool (WSB Rule 010.08). The approval of a rental of water from the Bank may substitute for a transfer (Section 42-1764, *Idaho Code*).

**Rental Agreement** – The approval document that authorizes rental of water from the Board's Bank. The approval is issued in the form of an agreement to be signed both by the Director, or other authorized staff, and the renter. The agreement outlines the terms of the rental and conditions of use.

**Rental Fee** – A fee is charged to rent water from the Board's Bank. The fee is based on the volume of water rented in acre-feet and the rental rate set for the water right (dollars per acre-foot) at the time the right is leased to the Board's Bank. The majority of water rights are rented at the current rental rate. The rental fee includes all administrative fees and is generally collected on an annual basis.

**Rental Rate** – The Board establishes a rate in dollars per acre-foot for the rental of natural flow water rights referred to as the current rental rate. Unless otherwise agreed upon by the lessor and the renter (pre-negotiated price) and approved by the director, the price for rental of a water right leased to the Board's Bank will be the current rental rate. The current rental rate includes all administrative fees.

**Rental Period** – The period of time the rental of water is authorized under the executed rental agreement. For rentals of more than five (5) years, the Department is required to publish notice and obtain Board review (WSB Rules 030.02 and 030.05).

**Rental Pools** – The water exchange market for water stored in reservoirs operated by local committees appointed by the Board pursuant to (WSB Rule 040). See Summary of the Idaho Water Supply Bank above for additional information about existing rental pools.

**Renter** – The individual or entity that files the application to rent water from the Board's Bank.

**Water Supply Bank** – The water exchange market operated by the Water Resource Board pursuant to Section 42-1761 through 42-1755, *Idaho Code*. This is a general term that includes both the Board's Bank and rental pools (WSB Rule 010.12).

## **ADDITIONAL INFORMATION**

Following is additional information about the use of the Board's Bank.

### **Water Supply Bank Rules**

Administrative rules governing the Water Supply Bank can be found at the following link:

<http://adm.idaho.gov/adminrules/rules/idapa37/37index.htm>

## **Uses of the Board's Bank – Leasing**

**Protection against forfeiture:** The five (5) year period of nonuse for forfeiture is stayed while a water right is leased to the Idaho Water Supply Bank (Section 42-1764, *Idaho Code*). However, the right must be consistent with the purpose of the Board's Bank (Rule 1) in order to be accepted.

**CREP:** Water rights on lands enrolled in a federal or state program such as CREP are not acceptable to the Board's Bank.

**Pivot Corners:** Irrigation of land using pivot sprinklers may result in unirrigated land in the corners of fields that have water rights. That portion of the right may be subject to forfeiture but may also be acceptable to the Board's Bank and would protect the unused portion of the right from forfeiture.

## **Uses of the Board's Bank – Renting**

**Change in Nature of Use:** Similar to a transfer, the nature of use of a water right may be changed through a rental agreement. If the change would result in a greater consumptive use of water under the right, the renter would be required to rent a greater quantity of water than available for diversion (i.e. irrigation right rented for a commercial dairy operation).

**Supplemental water:** If a water user may have rights curtailed at some point in the year due to priority regulation, a rental agreement may be able to provide water under senior rights in order to avoid or postpone curtailment.

**Temporary project water:** Some water uses such as large construction projects or the initial fill of a pond, may only require water for a short period of time.

**Other Unique Uses:** Mitigation, ground water recharge, instream flow, flow augmentation for power generation...etc.

## **Lease Application Processing**

1. Receive application and review
2. Draft "lease acceptance" with conditions of acceptance
3. Lease acceptance mailed to lessor
4. IRS form W-9 is required in order to issue payment to the lessor
5. Lessor cannot use the right while it is in the bank even if it is not rented
6. Irrigated land must be idled for the duration of the lease period

## **Rental Application Processing**

1. Receive application and review
2. Evaluate water rights leased to bank
3. Request watermaster review and comment
4. Draft "rental agreement" with conditions and mail to renter
5. Renter signs and returns agreement with payment
6. Payment is received and agreement is mailed back to renter with Director's signature
7. Renter can now use water